

Item no. 06

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 617 of 2019

with

IA No. CAN 2 of 2019 (Old CAN No. 5519 of 2019)

West Bengal State Co-operative Agriculture &
Rural Development Bank Ltd. & Ors.

vs.

Shri Subodh Kumar Bhadra & ors.

For the Appellants : Mr. Partha Sarathi Sengupta, learned Senior Advocate
Mr. Malay Kumar Ray

For the Respondents : Mr. Pratip Kumar Chatterjee

For the State : Mr. Raja Saha
Ms. Tanusri Chanda

Heard on : 17.02.2022 & 03.03.2022

Judgment on : 03.03.2022

T.S. Sivagnanam J.:

This intra court appeal is directed against an order dated 05.10.2018 passed in W.P. 12458(W)/2016 filed by the respondent herein. In the said writ petition the prayers sought for by the respondent was to quash the order dated 18.03.2016 passed by the appellant in Memo No. 2423/Admn/2700 as also to cancel the appointment of the private respondent nos. 8 to 12 therein and for a consequential direction to give appointment to the writ petitioner as sub-staff in the said Co-operative Society. The said writ petition has been allowed by the impugned order dated 05.10.2018.

Aggrieved by the same the appellant bank is before us by way of this appeal. The first issue to be considered as to whether the Court was justified in issuing the directions as contained in the penultimate portion of the impugned order, which reads as follows:

“(I) That the Bank shall take steps within a period of eight weeks from the date of communication of this order to the MD/ the Respondent No.4 to approve SKB/the writ petitioner to the cadre of SS.

(II) The appointment, as directed above, shall be treated to be notional on and from 2010 and, prospective in terms of actual benefits on and from the date of his appointment.

(III) The petitioner shall be treated qua his service record to service of the Private Respondent No.1. Shib Sadhan Roy, at serial No.4 of the panel of four as per Resolution of the BOD dated 12th August, 2000.

(IV) On the completion of eight weeks from the date of receipt of communication of this order by the MD/the Respondent No.4, the petitioner if not already appointed, shall be paid a consolidated sum equivalent to the basic pay of Shib Sadhan Roy (supra) the private respondent No.11 and a 2010 appointee. Such consolidated sum shall continue to be paid to the petitioner/SKB till the date of his actual appointment.

(V) The order impugned dated 18th March, 2016 stands thus set aside.”

Before we examine as to what relief the respondent/writ petitioner could have been granted, first we have to examine as to whether the learned writ court was correct in issuing the above referred directions. On carefully going through the impugned order we find that though the learned writ court had made very strong observations and findings to the effect that the appointment of the private respondents in the writ petition was illegal and voidable, it did not set aside their appointment. We are conscious of the fact that the private respondents in the writ petition were appointed in the year 2000 and 2010. This

finding has been recorded by the learned writ court in more than two places. If such is the position, the question would be whether a direction can be issued by the learned writ court to appoint the respondent/writ petitioner in the cadre of sub-staff. If according to the learned writ court, the appointment of the private respondents, which was challenged by the respondent/writ petitioner, was illegal and voidable and if the learned writ court was of the opinion that those appointments cannot be set aside then by issuing a direction to appoint the respondent/writ petitioner would tantamount to perpetuating illegality. Therefore, no such direction could have been issued by the learned writ court by directing the appellant to appoint the respondent/writ petitioner as a sub-staff. If such is the conclusion both on facts as well as law, the further direction of the learned writ court to treat the appointment of the respondent/writ petitioner to be notional on and from 2010 is wholly unsustainable in the eye of law. That apart, the learned writ court has directed that the respondent/writ petitioner shall be treated qua his service record to service of the private respondent No. 11/Shib Sadhan Roy at serial no. 4 of the panel of four as per resolution of the Board of Directors dated 12.08.2000. If the appointment of the said private respondent was illegal and voidable, according to the learned writ court, the question of placing the respondent/writ petitioner above private respondent no. 11 does not arise. Therefore, such direction is unknown to service jurisprudence. The next direction issued by the learned writ court is by directing that if

such appointment is not given to the respondent/writ petitioner within the time stipulated, he should be paid a consolidated sum equivalent to the basic pay of the private respondent no. 11/Shib Sadhan Roy. In our considered view, such direction is wholly alien to service jurisprudence and could not have been granted.

In the light of the above finding and the conclusion arrived at by us would be sufficient to set aside the order in the writ petition, nevertheless as the learned counsel for the appellant and the respondent/writ petitioner made very elaborate submissions, we proceed to test the correctness of the same.

The present appeal arises out of the order dated 05.10.2018 in W.P. 12458(W)/2016. This is the third writ petition filed by the respondent/writ petitioner. The first writ petition being W.P. 1935(W)/2001 wherein the writ petitioner sought for a direction to direct the appellant to consider his representation wherein he sought for regularization of his service on the ground that he has completed 240 days of continuous service in the appellant Co-operative Society. The writ petition was disposed of by an order dated 16.05.2001 directing the representation given by the respondent dated 22.01.2001 to be disposed of within a specified period. The respondent filed contempt application being CPAN 347/2002 alleging willful disobedience of the direction issued in the writ petition. The learned writ court had directed the

affidavit of compliance to be filed and noting that the order has been passed on 02.09.2005, the contempt petition was closed.

In the second writ petition filed by the writ petitioner in W.P. 8861(W)/2006, the prayer sought for by the appellant was to permanently absorb him as a regular employee of the appellant in view of the resolution dated 12.08.2000 of the Board of Directors of the appellant. The case of the respondent/writ petitioner rests upon certain observations made in the said order dated 17.08.2015 which also weighed heavily in the mind of the learned writ court while passing the impugned order dated 05.10.2018. Learned counsel for the respondent/writ petitioner pointed out that the learned counsel for the State had submitted that no approval was sought for by the appellant bank regarding waiver of qualification in the matter of appointment of sub-staff or for that matter any appointment to be given by the bank as sub-staff either in the year 2000 or in 2010. The learned counsel emphatically submitted that the learned writ court observed that there has neither been any waiver of qualification regarding appointment of regular sub-staff of the bank nor any appointment by the selection process taken place in the year 2000 and 2010. According to the learned counsel, the order dated 17.08.2015 passed by the learned writ court has attained finality and, therefore, the learned writ court was justified in allowing the writ petition by the impugned order passed on

05.10.2018. In our considered view, the submission made by the learned counsel for the respondent/writ petitioner cannot be accepted for more than one reason. Firstly, the observation of the learned writ court are after noting the submission made by the learned counsel for the State. The learned writ court has not recorded the arguments of the appellant bank on such submissions. That apart, it is not known as to how the learned writ court came to the conclusion that there is no waiver of qualification regarding appointment of regular sub-staff nor any appointment by the selection process which had taken place in the year 2000 and 2010. There is no material on record to come to such conclusion. In any event, such conclusion could not have been arrived at without giving an opportunity of hearing to the parties and after adjudicating the facts. Therefore, at best it can be construed as an observation and not a positive finding of fact. Secondly, learned writ court did not issue any positive direction in the said writ petition as sought for by the respondent herein but only directed the representation to be considered by the appellant bank after giving an opportunity of hearing to the writ petitioner by passing a reasoned order and to communicate the same to the writ petitioner. A direction to consider a representation should be meant to be understood as a direction to consider the representation on merits and in accordance with law. In any event, the learned writ court would not be entitled to grant relief of absorption of a casual employee, as it cannot go into the aspect as to whether the employee has completed the requisite number of days of

qualifying service. These aspects are alien to writ jurisdiction. Therefore, the penultimate direction issued by the learned writ court cannot be faulted as the learned writ court took note of the legal position and merely directed the consideration of the representation. Thus, observations made by the learned writ court in its order dated 17.08.2015 regarding the submission of the learned counsel for the State or any other observation cannot be construed to be a finding to be binding upon the appellant Co-operative Society.

Once we steer clear of this aspect we have to necessarily hold that the findings rendered by the learned writ court in the impugned order by placing heavy reliance on those observations contained in the order dated 17.08.2015 in W.P. 8861(W)/2006 have to be held to be unsustainable in law.

The case of the respondent/writ petitioner is that in the year 1998, he was engaged as a casual worker on a daily payment of Rs.40/- per day. Subsequently, in the year 2000 the selection process appears to have been done and a panel was drawn. The writ petitioner's case is that in the resolution passed by the appellant in its meeting held on 12th August 2000 five candidates, who are graduates, were selected and the name of the writ petitioner was placed in a panel of four names in which the name of the writ petitioner was in serial no.3. According to the writ petitioner, the appointment of those five candidates in the year 2000 is

illegal. The learned writ Court was also of the view that it is illegal and voidable, yet did not set aside those appointment being conscious of the fact that they were in employment from the year 2000 onwards. The writ petitioner alleges that in the year 2010 two other candidates, whose names were in the panel of four were given appointment and this, according to the writ petitioner, is illegal and he should have been given appointment in the year 2010. Therefore, the writ petitioner would contend that the appointment of those two candidates in 2010 has to be set aside. There has been no attempt made by the petitioner at any earlier point of time to challenge the appointments made by the appellant either in the year 2000 or 2010. For the first time, in the year 2016 in WP 12458 (W) of 2016 such attempt was made. In any event if we test as to what right would flow in favour of the writ petitioner merely by being empanelled in the year 2000, we note the legal position that the panel of wait listed candidates expires after a time period and it would lose efficacy after two years at the maximum unless there is any other rule which provides for longevity of the panel beyond two years. The appellants have taken a definite stand in all the proceedings that the panel expired in the year 2002. Even assuming the arguments of the learned counsel for the writ petitioner is to be accepted for argument sake there is no vested right in any candidate merely because his name has been empanelled. Thus, even assuming that the name of the writ petitioner finds place in the panel no vested right accrues for being considered and appointed on regular basis. The appellant had taken a

stand that out of four persons, whose names were there in the panel only two of them applied for the fresh selection during the year 2010. The writ petitioner was not in casual engagement at the relevant time and therefore not eligible to apply because the branch in which the writ petitioner was engaged as on daily basis was closed. After following a selection process in 2010 candidates were appointed. They are working and only in the year 2016 the writ petitioner seeks to challenge their appointment.

Taking note of the facts and circumstances of the case such a challenge at the behest of the respondent/writ petitioner cannot be entertained not only on the ground of inordinate delay in challenging the same but also on the ground that the writ petitioner has no locus stand to challenge those appointments as he claims to get a right because of his empanelment and settled law on the said issue is that no such right much less vested right accrues in favour of empanelled candidate for regular appointment.

The learned counsel appearing for the respondent/writ petitioner would vehemently contend that the exercise of power by the Managing Director of the cooperative society by passing the resolution relaxing the qualification are all illegal and the State Government has taken a specific stand in the earlier writ petition that no approval has been obtained would all go to show that the appointment of the private

respondents are illegal. As observed earlier, it is not for the respondent to question the power of the appellant society as those resolutions and decisions taken by the appellant were never the subject matter of any challenge earlier and even in the writ petition filed in 2016 which has resulted in the impugned order there has been no challenge to the decision of the appellant society with regard to any resolution passed by the bank waiving certain qualifications prescribed for appointment.

Thus, we are of the considered view that the learned writ Court committed an error in issuing the directions as referred to above, which in our view are wholly beyond the scope of the claim made by the respondent/writ petitioner.

For all the above reasons, we are constrained to set aside the order passed in the writ petition. Accordingly, the appeal and the connected application are allowed and the order passed in the writ petition is set aside and consequently the writ petition is dismissed.

Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned advocate for the parties, upon compliance of all formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava